IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

WA.No. 905 of 2007()

{IN W.P.(C)NO.25422/2005 OF THIS COURT}
.....

APPELLANT: PETITIONER

SURESH KUMAR,
T.C.11/281, CHRIST NAGAR, HOUSE NO.20 A,
KAWDIAR P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.B.S.SWATHY KUMAR

RESPONDENTS/RESPONDENTS:
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1. CORPORATION OF THIRUVANANTHAPURAM,
REPRESENTED BY ITS SECRETARY.

2. ANUS, RESIDING AT T.C.11/282,
CHRIST NAGAR, HOUSE NO.20,
KOWDIAR P.O.,
THIRUVANANTHAPURAM.

BY ADV.SRI.BABU KARUKAPADATH
R1 BY ADV.SRI.N.NANDAKUMARA MENON

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 28/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

W.A. No.905 of 2007

Dated this, the 28th day of May, 2007.

JUDGMENT

H.L. DATTU, C.J.

Challenging the orders passed by the learned single Judge in W.P.(C)No.25422/05 dated 13th November, 2006, the petitioner is before us in this appeal.

2. In the writ petition, it was contended that the appellant/petitioner is the absolute owner in possession of an extent of 9.875 cents of property comprised in survey No.3567/1-5 of Kawdiar Village. It is also averred that there was a gate in existence 7 metres to the inside of the appellant's property from his actual entrance. It is the allegation made in the writ petition that respondents 1 and 2 are trying to interfere with his peaceful possession and enjoyment of the aforesaid property.

3. The learned single Judge, taking into consideration the plea made by the appellant/petitioner and the defence raised by respondents 1 and 2, has come to the conclusion that the assertions and allegations made are all disputed facts and those disputed facts cannot be decided in a petition under Article 226 of the Constitution. That is how the

learned single Judge relegated the petitioner to the civil court to seek appropriate relief.

4. The appellant/petitioner asserts that he is in possession of a piece of land. It is his further averment that he is continuously enjoying that portion of the property. However, respondents1 and 2 are of the view that it is the Government property and the appellant has no right whatsoever in that property. These are all disputed facts and those disputed facts cannot be resolved in a petition under Article 226 of the Constitution for the reason that evidence has to be recorded. That cannot be done in a writ petition. In that view of the matter, the learned single Judge was justified in directing the appellant/petitioner to approach the civil court.

We do not see any error in the said order to call for any interference. Accordingly, the writ appeal deserves to be rejected and it is rejected.

Sd/-
H.L. DATTU,
CHIEF JUSTICE.

Sd/-
K.T. SANKARAN,
JUDGE.

sk/ //true copy//

P.S. To Judge